

prosecutor's evidence unconvincing, under the rule of reasonable doubt and with a penitentiary sentence to follow an adverse verdict. But the lack of defensive evidence, in the face of exposure by confessed confederates and of circumstances so suspicious, leaves Mr. Browne's innocence so much in doubt, so very much in doubt, that we are unable to see how any citizen, if free from personal and partisan impulses, can possibly vote for his reelection. Mr. Roosevelt was quite right in saying that reelection in such a case as Mr. Browne's does not vindicate the candidate and does incriminate the citizens whose votes he gets.

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Trial by Jury.

It is not by his protests against the reelection of such a man as Browne, but by his criticism of the jury for acquitting Browne, that the evil a man like Roosevelt may do, while his exclamations are taken so generally at face value, is illustrated. Jury intimidation is just as bad as jury corruption. Yet we hear little but approval of Mr. Roosevelt's ill-considered criticism of the Browne jury, and from men whose independence of party and devotion to good citizenship we have learned to respect. May it not be that they, too—like those faithless citizens who may vote for the reelection of Browne,—are unduly influenced by personal and partisan considerations?

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Political Purification.

Mr. Roosevelt's methods for political purification are not especially encouraging. Ostracism from politico-social fellowship, as exemplified in the Lorimer case, may possibly have some effectiveness. We doubt its having any, but as it has never been tried before there is a possibility. It is quite certain, however, that penalization—which appears to be Mr. Roosevelt's specific for legislative turpitude—is hopelessly ineffective. In the first place, sufficient proof of criminality is in most cases of legislative crime, almost an impossibility. In the next place, most of the worst misrepresentation in legislative bodies is not itself indictable nor is it usually accomplished by indictable means. And such convictions of legislators and other officials as have been secured in the past have not prevented revivals of legislative corruption. Penalization is not preventive. But there are preventive methods which may reasonably be inferred in advance to be effective, and which have been proved to be so in actual experience. We refer to the Oregon plan (pp. 616, 729, 750, 753, 774), under which the people can prevent objectionable legis-

lation by the Referendum, can by the Initiative make desired legislation which legislatures refuse, and can control legislators by the Recall. When the official conduct of legislators is thus constantly subject to popular control, legislation is not worth buying; and this is a safe and sure preventive, the only preventive, of legislative impurity. Curiously enough, however, Mr. Roosevelt is silent on the utility, as a political purifier, of the Initiative, the Referendum and the Recall.

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Meat Trust Indictments.

Read the indictments of the Federal grand jury at Chicago against the meat trust men—J. Ogden Armour, Edward Morris, Louis F. Swift, Edward Tilden, and others of lesser note. It is no innocuous breach of a statute that those indictments charge against these men. They charge a crime in the moral as well as the statutory sense.

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Lawyers assign legal crime to two categories. One includes crimes which in technical phrase are only "*mala prohibita*," and the other those that are "*mala in se*." The first are criminal only because they are prohibited by the law-making power—the smuggling of clothing, for instance. The others are criminal in themselves, simply because they are morally wrong—theft, for instance. Now, it is generally understood that the meat trust conspirators, if guilty at all, are guilty only of crimes known to lawyers as "*mala prohibita*," and that no stigma should attach; that Mr. Roosevelt, for illustration, might properly dine with or be politically or socially received by any of them, not only after indictment but even after conviction. But this is not true. (We don't mean that it is not true of Mr. Roosevelt, for no one can tell who might or might not be *persona grata* to him at any given dinner or reception.) What we mean is that it is not true that the offense of the accused beef trust men is only what lawyers call "*mala prohibita*"—not if the indictments set forth the facts truly. No statute was necessary to make their acts criminal, as that indictment narrates them. The necessity for the statute under which they are indicted is to give jurisdiction to the Federal courts. The acts charged are "*mala in se*," criminal in themselves, criminal under the moral law—whether the laws of legislatures or courts would reach them or not.

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If the indictment truly describes their offenses, those men are thieves—morally if not legally. We use the term in no mere denunciatory way. As